

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.283 of 2017

Sushant Basak, S/o Dulal Basak, aged about 26 years, R/o Futkala Colony, Quarter No.83, III Floor, P.S. Begampur, District Bahari (Delhi)

---- Applicant

versus

State of Chhattisgarh through Police Station Bhilai Nagar (Supela), District Durg, Chhattisgarh

--- Respondent

and

Criminal Revision No.375 of 2017

Surjeet Singh, aged about 30 years, son of Shri Baldeo Singh, resident of B-9, House No.6, Sector-5, P.S. Vijay Vihar, Delhi, District Rohini Outer, Delhi

---- Applicant

versus

State of Chhattisgarh through Station House Officer, Police Station Supela, Civil and Revenue District Durg, Chhattisgarh

--- Respondent

For Respective Applicants	:	Shri Arun Kochar and Shri Goutam Khetrapal, Advocates
For State/Respondent	:	Shri Sumit Jhanwar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

20.3.2018

1. Since the issue involved in both the revisions is common, they are disposed of by this common order.
2. Both the revisions have been filed challenging the order dated 27.1.2017 passed by the Special Judge, Durg in Case No.44 of 2016. Vide the impugned order, the Special Judge, Durg has framed charges against both the Applicants for the offence punishable under Sections 306/34, 420/34, 467/34, 468/34, 471/34 and 120B of the Indian Penal Code.
3. Learned Counsel appearing for the respective Applicants submit that so far as the constitution of an offence under Section 306 of

the Indian Penal Code is concerned, the necessary ingredient, i.e., abetment as defined under Section 107 of the Indian Penal Code is missing from the documents enclosed along with the case diary. They further submit that the documents which have been filed along with the charge-sheet without adding and subtracting anything to the said documents themselves would indicate that there was never an occasion on the part of the Applicants for abetting, instigating or enticing the deceased persons for committing suicide. They submit that the Applicants happen to be employees of the main accused Ashok Kumar who was running a fake company as the Citizen Finance Company in Delhi and the Applicants were working with him at Delhi. There is no allegation or overt act committed by the Applicants which compelled the deceased persons to commit suicide. None of the circumstances were fully established against the Applicants. The evidence led by the prosecution is extremely insufficient to bring the case within the purview of Section 306 of the Indian Penal Code as the ingredients of the abetment contained in Section 107 of the Indian Penal Code to commit suicide are not visible. It is further submitted that co-accused Niteen Saurya alias Raj filed a revision, being Criminal Revision No.613 of 2016 against framing of charge which has been allowed by this Court on 1.8.2016. The case of the Applicants is quite identical to the discharged co-accused Niteen Saurya alias Raj.

4. Learned Counsel appearing for the State opposes the submissions made by Learned Counsel appearing for the Applicants. He submits that the Applicants were fully aware of the fact that they were working for a fake company. Therefore, it cannot be said that

the offence under Section 306/34 of the Indian Penal Code is not made out against the Applicants. Hence, he claimed for dismissal of the present revisions.

5. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
6. In **(2002) 5 SCC 371 (Sanju alias Sanjay Singh Sengar v. State of M.P.)**, it has been observed by the Supreme Court in paragraph 12 that the word “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of *mens rea*, therefore, is the necessary concomitant of instigation.
7. Similarly, this Court, while deciding Criminal Revision No.511 of 2004 (Nihalluddin v. State of Chhattisgarh) on 3.11.2010, has also relied upon the above referred to judgment of the Supreme Court and observed that there should be a clear *mens rea* to commit an offence and there should be a direct or active act by the accused which led the deceased to commit suicide. It was further observed that there must be some evidence of instigation or cooperation or initial assistance by the accused forcing the victim/deceased to commit suicide to attract the offence under Section 306 of the Indian Penal Code.
8. In the instant case, a bare perusal of the documents filed along with the case diary does not reflect any ingredient to frame a charge against the Applicants for abetment to commit suicide by the deceased persons. Such offence under Section 306 of the Indian Penal Code is not made out. Apart from this, it is also clear that on same set of documents, while deciding Criminal Revision

No.613 of 2016, this Court has already discharged co-accused Niteen Saurya alias Raj from the charge framed under Section 306/149 of the Indian Penal Code.

9. Learned Counsel appearing for the State admitted the fact that no extra piece of evidence is available against the present Applicants.
10. From the above discussion, I find that the offence alleged against the present Applicants under Section 306/34 of the Indian Penal Code is not made out.
11. For the foregoing reasons, the instant criminal revisions are allowed in part. The impugned order dated 27.1.2017, so far as it relates to framing of charge against the Applicants under Section 306/34 of the Indian Penal Code, is set aside. The Trial Court shall now proceed against the Applicants for the remaining charges only.

Sd/-
(Arvind Singh Chandel)
Judge